IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6208 OF 2006.

Janardan Shripad Bapat. ... Petitioner.

V/s.

1. Suhasini Kamlakar Chittal,
   Now Mrs.Kulkarni, since
   deceased through her legal
   heir and representatives:

1A. Ratnakar Balkrishna Kulkarni,

2. Vijay Kamlakar Chittal,

3. Shubhada alias Supriya
   Harish Naik,

4. Tanuja alias Swati Subhash
   Pai,

5. Manisha Sainath Shete,

6. Ramesh Shriniwas Chittal. ... Respondents.

R.S.Apte with A.A.Garge for the petitioners.

CORAM: V.C.DAGA, J.

DATED: 19th September 2006.

P.C.:

. Heard learned counsel for the petitioners.

. Perused petition.

2. The petitioner has filed this petition under Article 227 of the Constitution of India

against the concurrent findings of fact recorded by the Courts below holding that the petitioners-tenants have acquired self-contained alternate accommodations in the same locality in the adjacent buildings.

3. Mr.Apte, learned counsel for the petitioners submits that there were no pleading in the plaint with respect to the acquisition of alternate accommodations. He further submits that acquisition by son of a tenant cannot be a ground to say that tenant has acquired alternate accommodation and that it cannot be a ground for his eviction. He placed reliance on the judgment of this Court in the case of **Dulanbi M. Belgaonkar v. Annappa Kurka Devadiga**, 2004 (4) Bom.C.R. 739 and **Nibilal Fakirahamad Shaikh v. Shankarrao Channavirappa Kigani**, 2004 (1) ALL MR 12. Alternatively, his submission is that acquired accommodations are not suitable since they are located on the third floor of the building and that there is no lift facility available.

4. Before proceeding to consider submissions made by Mr.Apte, it is necessary to appreciate facts and look at the evidence available on

record. The facts reveal that the plaintiffs/ respondents pleaded in the plaint (para-7), that the defendant has an independent block on ownership basis at Dombivli and that he has an additional block in Gaikwad Chawl Kalyan-Murbad Road with another block in the Chawl of Murar Sheth at Kalyan and, therefore, the defendant-tenant has no need to continue with the suit premises.

5. The defendant- tenant appeared and filed his written statement denying having any block either at Dombivli or Gaikwad Chawl or at Murar Sheth Chawl, Kalyan. He has further stated that there is a growth in the family of defendant No.1 and, therefore, his sons have got their independent blocks, with which the defendant has no concern.

6. With the aforesaid pleadings on record, the issues were framed. One of the issues was whether or not defendant No.1 has acquired alternate suitable accommodation.

7. With the aforesaid issue on record, the trial Court proceeded to record evidence of the parties.

8. The respondent No.1- original plaintiff No.1 was examined on behalf of the plaintiffs, who has stated in her evidence that the defendant has acquired premises just opposite the suit premises in Gaikwad Chawl at Kalyan and also one more block at Kalyan. The suit room occupied by the defendant has been kept closed. She has further deposed that the suit room in the occupation of by the defendant is admeasuring about 300 sq.ft.; whereas two blocks acquired by the defendant are self-contained blocks, each block is having area larger than the area of the suit premises. There is practically no cross-examination on behalf of the defendant on this assertion of the plaintiffs.

9. The petitioner- defendant entered into witness box and deposed that he has two sons. The elder son by name; Vijay, was in service of Bank and, presently, he is running typewriting institute which the tenant himself was running. That Mr.Vijay has acquired residential flat in

Aakash Ganga Co-op. Housing Society, Nidhi College Road at Kalyan. This block is located in the proximity of the suit premises. The area of the said block is about 600 sq.ft. Mr.Vijay is staying there with his wife and one son. His wife is also serving in the Assembly at Mumbai. The petitioner- defendant has further deposed that this block has been acquired 10 years before; when Vijay was about 29 years of age. Cost of acquisition of block was Rs.2 lakh. The evidence of the defendant was recorded on 29th September, 1999; it means the block occupied by Mr.Vijay must have been purchased in the year 1989-90. That time Vijay was serving as Stenographer. He was getting salary of about Rs.700/- per month. At that time, that he was staying with his father, the defendant. He left job in the year 1984. He, thereafter, joined service with the Vijaya Bank sometime in the year 1989. At that time his salary was Rs.1,000/-. He, thereafter, again left that service and presently, he is running typewriting institute which his father was running. When this block was purchased, defendant was having typing institute. All this evidence is sufficient to prove that Vijay had no purchasing

capacity to purchase residential block in the year 1989. At the time when the flat was purchased, his salary was Rs.700/- per month and he was staying with his father. It is, therefore, difficult to conclude, even-though the property was purchased in the name of the son Mr.Vijay; that does not belong to the petitioner. He appears to have purchased it in the name of his son Vijay just to avoid his eviction from the suit premises under the umbrella of the rent control legislation.

10. With the aforesaid evidence, the defendant- tenant has further went on to state that his another son Uday, who did his B.Sc., has acquired block in a building known as Usha Garden building in the year 1995 having area of about 575 sq.ft. At that time he was serving in one of the pharmaceutical companies earning monthly salary between Rs.8,000/- to 9,000/-. The cost of acquisition of that block was Rs.3.1 lakh. His block is also located in the adjoining area where the suit premises is located. Mr.Uday is unmarried. The present defendant is aged about 80 years. He has also lost his wife. Suit block is

lying closed. It is, thus, difficult to believe that defendant and unmarried son are staying separately.

11. The evidence on record, unequivocally, goes to show that the said this son, who is unmarried, has no separate kitchen. Obviously, he must be staying with his brother and father. The petitioner has deposed that his first son Vijay is now looking after his business; he is not in a position to run his business of typewriting institute. All this evidence shows that all the family members are together and the petitioner must be sharing accommodation with each son.

12. In the above view of the matter, the mere acquisition of premises in the name of both sons cannot lead to an inference that the defendant does not have right therein. When properties were acquired, all were in joint, staying together having common mess. One of the sons is running business of the family. Other son is still unmarried with no mother. Nothing is on record to show that there is partition in family and that defendant has no interest in the acquired

premises. The present age of the defendant is almost 80 years. His wife is no more alive. In the circumstances, it is difficult to believe that the petitioner who has lost his wife would not stay with his unmarried son or would not enjoy a company of a married son, that too; at the fag end of life, especially, when son has been given his business of running typewriting institute. In the circumstances, the concurrent findings recorded by the Courts below can very well be supported by the material on record as discussed hereinabove.

13. In the submission of Mr.Apte, blocks acquired are not suitable. Burden to prove unsuitability lies on the tenant. This burden has not been discharged by the petitioner. [see **Ganpatram v. Gayatri**, (1987) 3 SCC 576, para-21].

14. Sufficiency of evidence cannot be gone into in writ jurisdiction of this Court since this Court is not exercising appellate jurisdiction over rent Courts. This Court not being a Court of appeal, is not expected to reappreciate the evidence in view of the judgment of the Apex Court

in the case of **Laxmikant Revchand Bhojwani v. Pratapsingh Mohansingh Pardeshi,** (1995) 6 SCC 576 (para 9), wherein following observations were made:

> " Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

15. Bearing in mind the above observations of the Apex Court and considering the concurrent findings of fact recorded by the Courts below, it is very difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the lower appellate Court while confirming the findings of fact recorded by the trial Court on each and every issue raised in the appeal. The lower appellate Court appreciated

oral evidence and recorded findings of fact and affirmed the findings of facts recorded by the trial Court. No case is made out either in the petition or during the course of hearing to demonstrate that any piece of evidence was not taken into account by the Courts below or that any piece of evidence was misconstrued by the lower appellate Court.

16. It will not be out of place to place on record that when this Court was about to dismiss this petition, Mr.Apte, learned counsel for the petitioner was asked whether petitioner would like to have some reasonable time to vacate suit premises; but there was no response from Mr.Apte to the query made.

17. In the result, petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)